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No. 92-777

In the Supreme Court of the United States

OCTOBER TERM, 1992

INVENTION SUBMISSION CORPORATION, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly held that financial data requested from petitioner were relevant to the Federal Trade Commission's investigation of potentially deceptive practices.

2. Whether the district court abused its discretion by declining to issue a protective order restricting contacts between Commission investigators and witnesses identified through information supplied by petitioner.

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OPINIONS BELOW

The opinion of the court of appeals, Pet. App. 1a-11a, is reported at 965 F.2d 1086. The district court's enforcement order, Pet. App. 1c-13c, is not officially reported, but is reprinted at 1991-1 Trade Cas. (CCH) ¶ 69,338.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 1992. Pet. App. 1a. A petition for rehearing was denied on August 4, 1992. Pet. App. 1b. The petition for a writ of certiorari was filed on November 2, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is in the business of selling various services to help customers market their ideas and inventions. Petitioner offers to prepare brochures that describe customers' ideas or inventions; bring inventors' ideas to the attention of potential licensors or manufacturers; and maintain a "Data Bank" of businesses interested in new inventions. Pet. App. 1c. After receiving numerous consumer complaints, the Boston Regional Office of the Federal Trade Commission began an investigation to determine whether petitioner might be violating Section 5(a) of the Federal Trade Commission Act (the FTC Act), 15 U.S.C. 45(a), by soliciting customers through unfair or deceptive methods (such as misrepresenting the potential profitability of particular ideas or inventions).[1] Pet. App. 9a-10a, 4d, 12d.

Commission attorneys first asked petitioner to supply information concerning its business voluntarily. Petitioner refused, however, to provide certain information relating to its finances, sales staff, and customers. Pet. App. 2c. In December 1988, the Commission issued a resolution authorizing the use of compulsory process in the investigation.[2] *Ibid.* In

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[1] Petitioner complains that the Commission has been investigating it for more than four years. Pet. 6. As discussed below, during most of that period Commission attorneys were endeavoring to obtain essential information from petitioner.

[2] The resolution (quoted at Pet. App. 2a) defined the scope of the investigation:

> To determine whether Invention Submission Corporation, Martin Berger, and others may be engaged in unfair or deceptive acts or practices, * * * in violation of Section 5 of the Federal Trade Commission Act, * * * including but

May 1989, the Commission issued two administrative subpoenas, known as "civil investigative demands" (CIDs), pursuant to Section 20 of the FTC Act, 15 U.S.C. 57b-1. Pet. App. 2c. The CIDs requested information concerning, *inter alia*, petitioner's organization, income, sales procedures, advertising and services, and identification of petitioner's customers and employees and the companies in its Data Bank. *Id.* at 3d, 9d, 13d.

Petitioner asked the Commission to quash the CIDs as to most of the information demanded. See Pet. App. 1d-16d. Among other objections, petitioner argued that the financial information sought was irrelevant because it was allegedly sought solely in order to determine whether petitioner had enough assets to make an action for consumer redress worthwhile, a purpose held impermissible in *FTC* v. *Turner*, 609 F.2d 743 (5th Cir. 1980). See Pet. App. 13d. Petitioner also claimed that providing information concerning potential witnesses "without any safeguards on the use of the information" would be "unduly burdensome and oppressive." *Id.* at 3d.

Petitioner's request was assigned to then-Commissioner Terry Calvani under Commission Rule 2.7(d), 16 C.F.R. 2.7(d), which permits a single Commissioner to rule on petitions to quash. In September 1989, Commissioner Calvani modified the CIDs to reduce compliance costs, but rejected most of peti-

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not limited to false or misleading representations made in connection with the advertising, offering for sale and sale of its services relating to the promotion of inventions or ideas. The investigation is also designed to determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.

tioner's objections. Pet. App. 3a, 1d-16d. In particular, he rejected petitioner's relevance objection because the financial information was sought not to assess the feasibility of a redress action, but to establish petitioner's culpability for deceptive practices. *Id.* at 13d. As to "safeguards" restricting contacts with potential witnesses, he suggested several procedures that staff might follow, including asking customers about their experiences with idea promotion companies generally or asking open-ended questions that did not allege specific illegal activities, but he refused to impose any particular restrictions. *Id.* at 4d-5d & n.7.

Petitioner asked the full Commission to review Commissioner Calvani's decision. The Commission denied review in October 1989. Pet. App. 17d.

2. Petitioner continued to refuse to comply with most of the CID specifications, and in December 1989 the Commission filed a petition asking the district court to enforce the CIDs. Pet. App. 3a. Petitioner renewed its relevance objection and its demand for unspecified "safeguards" on Commission interviews with potential witnesses to avoid harm to petitioner's business. Among other arguments, the Commission pointed out to the court that petitioner's predictions of injury and requests for "safeguards" were particularly unwarranted in light of a Commission attorney's assurances—reiterated in declarations filed with the court under penalties of perjury—that Commission staff would inform persons they contacted that their interviews were part of an investigation of the invention promotion industry generally, without identifying petitioner as a particular target. The Commission also stated that its staff did not intend to contact most of petitioner's customers or

Data Bank companies, and had no present intention of contacting any of petitioner's advertising media. *Id.* at 7c-8c & nn.24, 25.

In February 1991 the district court entered an order enforcing the CIDs in full. Pet. App. 14c. The court found that the contested specifications (in-cluding those seeking financial information) were relevant and not unduly burdensome. *Id.* at 3c-7c. The court rejected petitioner's request to limit or impose conditions on the Commission's contacts with witnesses, concluding that accommodating petitioner's "highly speculative fears" would virtually nullify the Commission's investigatory powers. It also concluded that in light of the assurances offered by the Commission and its investigative staff regarding the conduct of the investigation, petitioner's "apprehensions [were] unfounded and insufficient to overcome the FTC's presumptive right to access to individuals and records." *Id.* at 7c-8c & nn. 24, 25. Petitioner was ordered to comply with the CIDs within 20 days. *Id.* at 14c.

3. Petitioner moved to stay compliance and to modify the court's order so as to require the Commission's attorneys to adhere to the assurances they had given regarding their contacts with witnesses. The Commission opposed the motion. After negotiations, a Commission attorney sent a letter to petitioner's counsel reiterating those assurances. See Pet. App. 4a; C.A. App. 121-124. In return, petitioner agreed to a production schedule, and the parties stipulated to denial of the motion to stay and modify the enforcement order. See Pet. App. 4a.

4. Petitioner appealed the enforcement order. The court of appeals affirmed the district court's order in

its entirety. Pet. App. 1a-11a. Following, *inter alia*, this Court's holding in *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950), the court of appeals upheld the district court's finding that the requested information was "reasonably relevant" to the Commission's investigation. Pet. App. 4a-7a. It also affirmed the district court's refusal to impose limitations on Commission investigators' contacts with potential witnesses. It noted that petitioner's claim that communications with customers would place petitioner "under a cloud of suspicion," leading to business losses, "could be made with respect to almost any investigation." *Id.* at 8a. As to the Commission's assurances with respect to conduct of the investigation, the court first noted that it was "by no means obvious that [any] representations were required." *Ibid.* In any event, the court held that in light of the long-standing presumption of administrative regularity, the district court did not abuse its discretion by failing to "freeze" the Commission's assurances into a court order. *Id.* at 8a-9a.

ARGUMENT

1. Petitioner contends that the requested financial information was irrelevant to the Commission's investigation, and that the court of appeals impermissibly shifted to petitioner the burden of proving that the information requested was irrelevant. Pet. 18-23. Neither contention merits further review.

a. In issuing CIDs to petitioner, the Commission was investigating whether petitioner might be using illegal deceptive practices. This Court has said that when investigating potential violations of the law, the Commission is:

> analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.

United States v. *Morton Salt Co.*, 338 U.S. 632, 642-643 (1950). Accordingly, this Court and the lower courts have consistently recognized that a broad definition of relevance applies to compulsory process issued in investigations by the Commission and other administrative agencies. Information sought need only be "reasonably relevant" or "not plainly incompetent or irrelevant" to an inquiry that is within the Commission's authority. *Id.* at 652; *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501, 509 (1943). Accord, *e.g.*, *Sandsend Fin. Consultants, Ltd.* v. *Federal Home Loan Bank Bd.*, 878 F.2d 875, 878-879, 882 (5th Cir. 1989); *FTC* v. *Texaco, Inc.*, 555 F.2d 862, 872-874 & n.23 (D.C. Cir.) (en banc), cert. denied, 431 U.S. 974 (1977).

Furthermore, where, as here, an agency is only investigating possible violations and has not yet formulated specific charges, the agency "can hardly be expected to know whether [requested] data will in fact be relevant until they are procured and scrutinized." *United States* v. *Arthur Young & Co.*, 465 U.S. 805, 814 (1984). Accord, *e.g.*, *University of Pennsylvania* v. *EEOC*, 493 U.S. 182, 188, 194 (1990) (rejecting argument that agency must demonstrate a "particularized necessity of access, beyond a showing of mere relevance"); *United States* v. *First City Nat'l Bank*, 598 F.2d 594, 599 (Temp. Emer. Ct. App. 1979) (agency need not show a specific need for the subpoenaed information); *FTC* v. *Texaco, Inc.*, 555

F.2d at 877 (agency not required to "delineat[e] * * * a particular theory of violation" or offer specific examples of how responsive documents might relate to potential alleged violations). Indeed, this Court has indicated that any materials that may "cast light on" matters under investigation are relevant in the administrative subpoena context. *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 68-69 (1984); *United States* v. *Arthur Young & Co.*, 465 U.S. at 814-815.

The three CID specifications at issue sought petitioner's balance sheets, income statements, and gross annual sales volumes, and books of account showing the financial status of each of petitioner's regional offices. See Pet. App. 13d n.18. There are a number of ways in which such information is relevant to the Commission's investigation. First, as Commissioner Calvani stated in denying petitioner's request to quash the CIDs, such information "may reveal the extent to which profits can be realized from the alleged misrepresentations," which may in turn bear on petitioner's culpability.[3] Pet. App. 13d. Financial information could, for example, reveal whether higher profits in some of petitioner's regional sales offices gave petitioner an incentive to

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[3] The primary focus of the investigation is on whether petitioner's salespersons have made oral promises (of profitability and the like) that override the representations and disclaimers in its written promotional materials and contracts. See Pet. App. 9a-10a, 12d. If such conduct led to high profits, petitioner would have had an obvious motive to ignore it, thus undermining any potential argument that petitioner should not be held responsible for allegedly "unauthorized" misrepresentations.

ignore any misrepresentations allegedly made by those offices. Gov't C.A. Br. 17, 19.

Financial statements showing breakdowns of petitioner's expenses also could reveal whether petitioner actually devoted much of its clients' payments to providing them with the services petitioner promised.[4] Gov't C.A. Br. 19. In addition, petitioner's gross annual sales could suggest the extent of potential consumer injury, which would be relevant to determining whether any violations were material. Gov't C.A. Br. 19-20; cf. *Invention Submission Corp.*, 5 Trade Reg. Rep. (CCH) ¶ 23,068, at 22,746-22,747 & n.12 (F.T.C. 1991). And as the court of appeals remarked, profit comparisons among offices or between petitioner and similar companies could "help the Commission to allocate its limited investigative resources to protect the largest number of consumers from potential harm." Pet. App. 7a. Thus, the court of appeals correctly sustained the district court's finding that the requested financial informa-

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[4] This rationale was expressed in Commissioner Deborah Owen's ruling on petitioner's request to quash supplemental CIDs issued in 1991 (which are not at issue here). Gov't C.A. Br. 19 n.28; *Invention Submission Corp.*, 5 Trade Reg. Rep. (CCH) ¶ 23,068, at 22,746 (F.T.C. 1991). The usefulness of financial breakdowns for this purpose was illustrated in *FTC* v. *Dupont Model Management, Inc.*, 1992-1 Trade Cas. (CCH) ¶ 69,694, at 67,156-67,157 (E.D. Pa. 1992), where evidence showing that most of the defendants' income came from selling portfolio photographs to would-be models (rather than from commissions on fees paid to the models by employers) was cited as one indication that defendants were not offering a legitimate modeling service.

tion was reasonably relevant to the Commission's investigation.[5]

b. Petitioner contends that establishing a profit motive for deceptive practices was "the Commission's only rationale" for showing relevance. Pet. 19. Citing the court of appeals' comment that "profitability in and of itself does not suggest wrongdoing," Pet. App. 7a, petitioner then argues that the court "in effect rejected the Commission's only rationale for relevancy of the subpoenaed information." Pet. 19. But the Commission never equated profitability alone with deceptive business practices; it merely suggested that "lucrative returns may evidence a motive for encouraging or tolerating misrepresentations." Gov't C.A. Br. 19. And, as explained above, it suggested not one but several ways in which the information sought might prove relevant to its investigation. Although the court of appeals termed Commissioner Calvani's brief explanation of relevance "puzzling,"[6] Pet. App. 7a, it

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[5] Other courts have expressly found corporate financial information relevant to investigations of deceptive practices. See *FTC* v. *American Buyers Network, Inc.*, 1991-2 Trade Cas. (CCH) ¶ 69,551, at 66,443 (D. Colo. 1991) (financial information relevant to show interrelationships between respondent and affiliated companies, and to confirm other information); *FTC* v. *International Diamond Corp.*, No. C-81-29 MISC SAW (N.D. Cal. Jan. 4, 1982), slip op. 6 (cost and profit information relevant to investigation of allegedly deceptive diamond sales). Cf. *SEC* v. *Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1055 (2d Cir. 1973), cert. denied, 415 U.S. 915 (1974) (financial statements relevant to alleged violations of securities laws).

[6] The Commissioner's explanation was understandably brief because the principal issue before him was not how financial information would be relevant to showing liability, but whether

correctly relied on the several "different ways" in which the information might be relevant in upholding the district court's determination. See *id.* at 6a-7a.

Petitioner concedes that relevance "must be measured against the scope and purpose of the FTC's investigation, as set forth in the Commission's resolution [authorizing compulsory process]." Pet. 21, quoting *FTC* v. *Texaco, Inc.*, 555 F.2d at 874. As the court of appeals correctly noted, Pet. App. 5a, a district court in a subpoena enforcement action is not reviewing the agency's "internal determination of relevance," but making its own determination. Thus the court may "inquire into all relevant matters, unlimited by the scope of the agency's own inquiry, if any." *Ibid.*, quoting *United States* v. *Exxon Corp.*, 628 F.2d 70, 77 (D.C. Cir.), cert. denied, 446 U.S. 964 (1980). Accordingly, it was not erroneous, as petitioner apparently contends (Pet. 21), for the court of appeals to affirm enforcement of the CIDs based on the Commission's views as explicated in its briefs below, or even on the court's own views of relevance. See Pet. App. 7a.

c. Petitioner also claims, Pet. 19-23, that the court of appeals effectively relieved the Commission of the burden of showing relevance, and instead required petitioner to prove that the requested information was irrelevant to the Commission's investigation. This argument is based primarily on the court's statement that "in light of the broad deference we

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the information was sought for that purpose or, as petitioner argued, in order to determine whether petitioner had sufficient assets to make an action for consumer redress worthwhile. Pet. App. 13d-14d.

afford the investigating agency, it is essentially the respondent's burden to show that the information is irrelevant." Pet. 19, quoting Pet. App. 7a (emphasis omitted). The court made that statement, however, only after it had considered the Commission's rationales for requesting petitioner's financial information and concluded that the information was relevant. See Pet. App. 6a-7a. Read in context, the court's comment merely recognizes that under the overwhelming weight of authority, an agency's burden of establishing relevance is met so easily that the burden rapidly shifts to the recipient of compulsory process to rebut the agency's showing.[7] Indeed, this Court has made a similar observation. See *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 68-69 (1984) (relevance requirement "is not especially constraining" because the courts have "generously construed the term 'relevant' and have afforded the [EEOC] access to virtually any material that might cast light on the allegations against the employer").

2. a. Petitioner contends, Pet. 23-24, that the decision below conflicts with that in *FTC* v. *Turner*, 609 F.2d 743 (5th Cir. 1980). *Turner* involved an administrative subpoena issued by the Commission *after* it had investigated Turner and his company, held an administrative trial, and found them liable for engaging in deceptive practices. The subpoena sought financial information about Turner and his family solely to determine whether they had sufficient assets to warrant a separate action for

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[7] Moreover, as the appellant, petitioner bore the burden of showing that the district court's finding of relevance was clearly erroneous.

consumer redress under Section 19(a)(2) of the FTC Act, 15 U.S.C. 57b(a)(2). See 609 F.2d at 744. A sharply divided panel of the Fifth Circuit held that *in a redress action* the Commission's position is analogous to that of private litigants, who normally may not obtain information about a defendant's assets in pre-trial discovery. *Id.* at 745.[8] The majority therefore held that the Commission lacked "investigative authority"—the predicate for compulsory process—to obtain financial information about Turner "for the purpose of determining the practical feasibility of instituting a [redress] action."[9] *Id.* at 745-746.

Petitioner's contention that *Turner* "held that the financial information sought by the Commission was not relevant to the question of whether the law was violated," Pet. 23, misreads the court's opinion. The argument is based on a single sentence in the opinion: "The amount of Turner's assets is not relevant to an inquiry into whether a violation of the law exists." 609 F.2d at 745. See Pet. App. 5a. That sen-

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[8] Judge Brown dissented on the ground, *inter alia*, that the Commission's redress actions serve public law enforcement purposes, making analogies to private litigants inappropriate. 609 F.2d at 746-754. The Commission later issued a detailed ruling rejecting the *Turner* majority's opinion, relying in part on this Court's later observation in *General Tel. Co.* v. *EEOC*, 446 U.S. 318, 326 (1980), that "[w]hen the [agency] acts, albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest." See *American Aqua Systems, Inc.*, 5 Trade Reg. Rep. (CCH) ¶ 22,750, at 22,475-22,478 (F.T.C. 1989).

[9] Petitioner concedes in this Court that the Commission does not seek petitioner's financial information for purposes of determining the feasibility of redress. Pet. 23 n.8.

tence, however, follows the court's general discussion of the Commission's "authority to conduct investigations to determine whether the law is being violated," and its assertion that the FTC's position in Turner's case "fail[ed] to distinguish investigations seeking information concerning wrongs done consumers from investigations into the practicality of pursuing a remedy for those wrongs." 609 F.2d at 745. In context, the immediately following comment, on which petitioners rely, merely expresses the Court's conclusion that Turner's case involved the latter sort of investigation—in which, as the opinion goes on to elaborate, *id.* at 745-746, the majority thought the Commission's subpoena power unusually circumscribed.

In *Turner*, the Commission had already determined in a final order that Turner had violated the law, and it sought financial information for the sole purpose of deciding whether to pursue consumer redress. See 609 F.2d at 746 n.1 (quoting Commission's resolution authorizing compulsory process). Because that was the only issue before the Fifth Circuit, that court hardly considered, as petitioner asserts, Pet. 24, "all possible bases" for enforcing a subpoena. Indeed, the court quite clearly did *not* consider any basis for enforcement based on an investigation, such as that in this case, "seeking information concerning wrongs done consumers."[10] In any event, it is clear that

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[10] Moreover, the *Turner* subpoena sought personal financial information from the defendant and his family, 609 F.2d at 744, raising personal privacy concerns but likely to reveal little about any deceptive business practices. Here, in contrast, the Commission seeks corporate balance sheets and sales figures germane to the conduct of petitioner's business. These

Turner's facts did not involve the normal investigatory context. Even read as petitioner suggests, therefore, the court's statement would be, as the court below remarked, "mere dictum for which the *Turner* court provided no explanation." Pet. App. 6a. Thus, regardless of whether *Turner* was correctly decided, there is no conflict between it and the decision in this case.

b. Petitioner contends further, Pet. 24, that the Commission previously construed *Turner* as "precluding discovery of financial information by the Commission * * * at any time prior to entry of a judgment." Petitioner relies on Commissioner Calvani's ruling on a petition to quash a CID issued to Rome Finance Company. Pet. App. 1f-6f. Whether or not petitioner reads that ruling correctly,[11] it is of little relevance. First, as noted above, the full Commission later considered both *Turner* and *Rome Finance*—which it, unlike petitioner, viewed as involving only the *Turner* issue of information sought "to determine the feasibility of an action for

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differences alone make *Turner* inapposite. Cf. *Morton Salt*, 338 U.S. at 652 ("corporations can claim no equality with individuals in the enjoyment of a right to privacy").

[11] Although it is not entirely clear from the text of the Rome Finance ruling, it appears that the CID at issue sought financial (as opposed to other) information only for purposes similar to those advanced in *Turner*. The ruling is silent about whether financial information might be relevant to investigating whether deceptive practices have occurred. See Pet. App. 3f-4f. It certainly did not, as petitioner's broad characterization suggests, state that financial information would be irrelevant to *any* Commission investigation. The relevance of corporate financial information to some investigations, such as proposed mergers, is of course beyond question.

consumer redress"—and explicitly rejected the *Turner* majority's conclusions. *American Aqua Systems, Inc.*, 5 Trade Reg. Rep. (CCH) ¶ 22,750, at 22,475-22,478 (F.T.C. 1989); see note 8, *supra*. Second, any inconsistency between the Commission's position here and that of a single Commissioner in a prior administrative ruling would, in any event, neither control a lower court's independent determination of relevance in a later case, Pet. App. 7a n.2, nor justify review of that determination by this Court.

3. Finally, petitioner argues, Pet. 25-28, that the district court erred by not explicitly ordering the Commission's staff to adhere to the assurances given to petitioners and to the district court regarding contacts with potential witnesses. Petitioner contends that the "presumption of administrative regularity and good faith," Pet. App. 8a, which the court of appeals invoked in upholding the district court's exercise of its discretion, is either non-existent or inapplicable here, Pet. 27-28, and complains that the CID is unduly burdensome because the court's order permits the Commission "unlimited contacts" with potential witnesses. Pet. 25. Aside from unjustifiably impugning the good faith of the Commission's staff, petitioner's arguments wholly fail to show that the Commission or the courts below abused their discretion.

The court of appeals was clearly correct that administrative agencies are generally entitled to a presumption of regularity—that is, an assumption that an agency and its staff will act responsibly. See, *e.g.*, *FCC* v. *Schreiber*, 381 U.S. 279, 296 (1965); *United States* v. *Chemical Found., Inc.*, 272 U.S. 1, 14-15 (1926). Imposition of judicial protective orders

governing agencies' use of subpoenaed information is therefore ordinarily unnecessary and inappropriate. See, *e.g.*, *FCC* v. *Schreiber*, 381 U.S. at 295-298; *FTC* v. *Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 975 (D.C. Cir. 1980); *FTC* v. *Anderson*, 442 F. Supp. 1118, 1123-1126 (D.D.C. 1977), aff'd in part and remanded in part, 631 F.2d 741 (D.C. Cir. 1979). Petitioner's suggestion that the presumption does not apply to assurances given by the Commission's staff, Pet. 26 & n.9, 28, was effectively rejected in *Exxon Corp.* v. *FTC*, 665 F.2d 1274, 1279-1280 & n.7 (D.C. Cir. 1981), in which the court of appeals held that it was inappropriate to issue a judicial protective order to assure that the Commission's staff would not improperly disclose subpoenaed documents. Indeed, petitioner's apparent suggestion that Commission staff would lightly disregard representations made under penalties of perjury in a federal district court proceeding borders on the absurd.

Furthermore, the courts below based the refusal to issue a protective order on reasons beyond the Commission staff's assurances. The district court described petitioner's predictions as a "doomsday scenario," Pet. App. 7c, and observed that if it were to "acknowledge [petitioner's] highly speculative fears of damage to corporate reputation as adequate to defeat the agency's information requests, the FTC's subpoena power would be rendered powerless and serious investigation of corporate behavior would be a futile exercise." *Id.* at 8c. Similarly, the court of appeals observed that the difficulty with petitioner's contention that it will be placed "under a cloud of suspicion and speculation" was that "it could be made with respect to almost any investigation." *Id.* at 8a.

See *FCC* v. *Schreiber*, 381 U.S. at 298 ("naked assertion of possible competitive injury" insufficient to justify a judicial protective order).[12]

The district court was thus well within its discretion in refusing petitioner's request to embody the Commission staff's assurances in its formal order. The court of appeals properly refused to disturb that decision, which warrants no further review by this Court.

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[12] The decisions below are consistent with numerous cases in which courts enforcing administrative agencies' compulsory process have refused to impose limits on the manner in which agency investigators contact witnesses. See, *e.g.*, *United States* v. *Abrahams*, 905 F.2d 1276, 1285-1287 (9th Cir. 1990) (reversing order that limited IRS to examining a "representative sample" of files and required IRS to accept respondent's presence during customer interviews); *SEC* v. *Brigadoon Scotch Distrib. Co.*, 480 F.2d at 1056 (striking prefatory statement that district court had ordered be given to interviewees); *United States* v. *Newman*, 441 F.2d 165, 173-175 (5th Cir. 1971) (striking requirement that investigational target be allowed to participate in IRS interviews); *FTC* v. *Stanley H. Kaplan Educ. Center Ltd.*, 433 F. Supp. 989, 991-994 (D. Mass. 1977) (refusing to place limits on FTC's contacts with respondent's customers).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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